vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.543 OF 1990

The State of Maharashtra ... Appellant

V/s.

1. Dattatraya Bapu Pawar & 2 Ors. ... Respondents

Mr.P.S. Hingorani, APP, for Appellant
Ms.Ameeta Kuttikrishnan for Respondents

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 7, 2007**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The State has filed the present appeal against the judgment and order of the Sessions Judge, Pune acquitting the accused of the offences punishable under sections 302, 307 and 504 r/w 34 of the Indian Penal Code.

2. The case of the prosecution is that one Namdeo was working in Dubai and used to arrange jobs for the villagers of Wagholi village as and when it was possible. Accused No.1 requested him to secure a job for him in Dubai when Namdeo had returned to the village for a holiday. Several others in the village had also sought an assurance from Namdeo that he would arrange for jobs for them. It appears that Namdeo left for Dubai after assuring some of the villagers that he would make an attempt to secure jobs for them in Dubai.

According to the prosecution, on 2.10.1988, Namdeo's brothers Ramdas and Damu left their house on a motor cycle for distributing milk. As they were alerted by their nephew Milind that the accused were waiting to assault them on the road, Ramdas carried a wooden stick with him. The accused made them stop the motor cycle after which they dismounted the motor cycle. Accused No.1 had a grievance that their brother Namdeo had not managed to secure a job for him in Dubai and started abusing him. The prosecution alleges that the complainant i.e., Ramdas suggested that all of them go to the Police Patil and settle the dispute. When they reached near the house of the Police Patil, accused No.1 inflicted a blow with a knife on Damu's chest. Ramdas who was carrying a stick in his hand hit accused No.1 with it on the head. Accused Nos.3 and 4 caught hold of Damu and assaulted him with a knife. They dragged him to a spot near a lake and murdered him in a ditch nearby. Damu shouted for help for a while. Once his cries stopped, Accused Nos.1 and 2 assaulted the complainant Ramdas. A milkman Shankar Raut who reached the spot intervened and separated them. The prosecution also alleges that another brother of Ramdas, Dnyanoba came to the spot and also tried to stop the quarrel upon which he was assaulted. The Police Patil and his wife rushed to the spot on hearing Ramdas's cries. The Police Patil informed the police station at Loni of the incident and that Damu had died on the spot while Ramdas

had been admitted to Sassoon Hospital. The accused were arrested and tried by the Sessions Court, Pune for commission of the aforesaid offences. The trial resulted in their acquittal.

3. The learned Assistant Public Prosecutor has submitted that the learned Sessions Judge has committed an illegality by not accepting the evidence of the complainant who has been examined as PW1 only on the ground that no independent witness was examined by the prosecution to prove its case. He submits that PW1 was also assaulted and was an eye witness to the incident and as such his testimony ought to have been accepted by the trial Court. The learned APP further pointed out that a blood stained knife has been discovered at the instance of accused No.1. However, this discovery has been discarded by the learned Sessions Judge on the ground that it was found in an open field. He contends that the injuries suffered both by the deceased Damu as well as the complainant Ramdas were severe and, therefore, the accused ought to have been convicted under sections 302, 307 and 504 r/w 34 of the IPC.

4. We have with the assistance of the learned APP and the learned Advocate appearing for the accused perused the judgment impugned in this appeal as also the evidence on record. We find that the view taken by the learned Sessions Judge is a possible view and there is

no perversity in the findings arrived at by the trial Court.

5. The trial Court has rightly held that the prosecution ought to have examined other witnesses besides the complainant to prove the incident. The complainant has mentioned that one Shankar Raut had intervened in the quarrel between himself and the accused while he was being assaulted. This Shankar Raut has been named in the FIR. However, he has not been examined by the prosecution for reasons best known to it. Shankar Raut was an independent witness to the incident and his testimony would have some bearing on this case and would have thrown light on the exact nature of the incident. The reasons given by the learned Sessions Judge for discarding the testimony of the sole eye witness who was the complainant cannot be called perverse. The complainant has stated that after he was assaulted with a knife on his thigh, he left the milk cans by the side of the road, started his motor cycle and left for Sassoon hospital for treatment. This version seems highly impossible as it would have been difficult for PW1 to ride a motor cycle with a gash on his thigh. PW1 has also mentioned that Dnyanoba, his brother was present when the incident occurred and was injured when he tried to intervene. If that was so, Ramdas would certainly have taken Dnyanoba alongwith him to the hospital. There is no reason why he was not

examined by the prosecution if in fact Dnyanoba was present.

6. During the cross-examination, PW1 has admitted that after he was injured, he rode his motor cycle for a distance of about 4 kms to Loni Kand outpost. He reported the incident to head constable Deshmane who recorded the same in the register. Accused No.1 also went to the outpost a little later. The head constable then took both of them to Sassoon hospital for treatment. Significantly, the head constable was not examined by the prosecution. Nor was the noting made by him in the register produced and exhibited before the trial Court. This noting was in fact the first information given to the police about the incident by the complainant and ought to have been treated as the First Information Report. The complaint which is at exhibit 27 cannot be considered as the FIR. There is no explanation at all by the prosecution why this material statement, given by the complainant Ramdas to the head constable at the Loni Kand outpost has not been produced.

7. The knife which allegedly was recovered at the instance of the accused No.1 was found in an open place where anybody could have access. The knife was blood stained and, therefore, sent for analysis to the Chemical Analyser. It was found that the blood stains

on it belonged to the ‘AB’ group. The analysis of the blood groups of the deceased and accused No.1 indicates that both had the same blood group ‘AB’ while the complainant had blood group ‘O’. Thus, the knife could not have been used to assault the complainant. Whether the blood on the knife was of accused No.1 or the deceased has also not been proved conclusively. In such circumstances, we agree with the findings reached by the Sessions Judge.

8. The Sessions Court has marshalled the evidence well and has drawn correct inferences. We agree with the inferences drawn by him and dismiss the appeal.

9. Appeal dismissed.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)